SUPREME COURT OF THE UNITED STATES

WILLIAM GEORGE BONIN, PETITIONER *v.* CALIFORNIA

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

No. 88–6341. Decided March 20, 1989

The petition for a writ of certiorari is denied.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting from denial of certiorari.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg* v. *Georgia*, 428 U. S. 153, 231 (1976) (MARSHALL, J., dissenting), I would grant the petition for certiorari and vacate the death sentence in this case. Even if I did not hold this view, I would grant the petition to resolve the question whether a trial court may instruct a penalty phase jury that, "[i]f you conclude that the aggravating circumstances outweigh the mitigating circumstances, you shall impose a sentence of death." As I stated in *Hamilton* v. *California*, —— U. S. —— (1989) (MARSHALL, J., dissenting), "I have grave doubts that such an instruction permits the individualized and reliable sentencing determination that the Constitution requires in capital cases, particularly where, as here, it is coupled with prosecutorial remarks stressing the limits on jurors' discretion." *Id.*, at ——. I dissent.